IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

CRP.No. 736 of 2007()

AGAINST THE ORDER DATED 24/07/2007 IN EP 34 2007 IN OS.31/1985 of II ADDL.M.C.,TRIVANDRUM

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REVN. PETITIONER: (JUDGMENT DEBTOR/DEFENDANT)

MUHAMMED HUSSAIN,
KOLA MANGALAM, MANUKULADHICHAMANGALAM,
NEMOM VILLAGE.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS: (ADDL. DECREE HOLDER/PLAINTIFF)

R.SIVANKUTTY,
ARAYALU PULIVILAKATHU VEEDU, THIRUMALA VILLAGE,
TRIVANDRUM.

BY ADV SHRI. P.KESAVAN NAIR

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.No.736 OF 2007 A

Dated this the 14th August, 2007.

O R D E R

This revision petition is preferred against the order of the II Additional Munsiff, Thiruvananthapuram in E.P.34/07 in O.S.31/85. The court below did not entertain the objections of the revision petitioner and directed the decree holder to take steps for delivery. The main grievance of the civil revision petitioner is to the effect that he had raised various contentions in his Ext.A5 objection and the court has considered only one of the objections and had granted an order which is not correct. On the other hand learned counsel for the respondent would contend that materials available would establish that the attempt is only to protract the proceedings. Both the learned Advocates appearing for the parties had addressed on the points relied on by them and had also made available the earlier documents for perusal of the court. First I deal with the question of identity of the property. The preliminary decree Ext.A1 judgment would give an idea about the property which is involved in the dispute. The mortgage is with respect to 25 cents of property. Out of the 25 cents of property, by virtue of a document 2653/63 12 cents had been purchased by the first defendant and the

said property has been properly identified, demarcated and handed over possession to the first defendant. So, it is the remaining property of 13 cents that is the subject matter for delivery. The court had clearly held that the plaintiff is entitled to redeem and recover possession of northern 13 cents out of the plaint schedule property after depositing the proportionate mortgage money. So the property which is given to the first defendant as per the 1963 document is situated on the southern side which has been clearly identified at that point of time. Further it also enables the plaintiffs to move a commission application in case of difficulty in demarcating the property. The first appellate court by Ext.A2 judgment dismissed the matter at the stage of admission making an observation that plaintiff has to take risk as no commission was taken out by the plaintiff at the final decree stage. The court also found that no petition is filed to record the appellant as legal heirs of the deceased first defendant. Against that decision a second appeal was also preferred before this Court. This Court confirmed the decree passed in A.S.301/94 and dismissed the second appeal. So, so far as the identity factor is concerned there are enough materials which is sufficient to fix the identity of the property. Therefore, the delivery

could not be effected without properly identifying the property cannot be accepted at this stage especially when the first defendant himself has got 12 cents of property immediately on the southern side of the property. So, the said contention though not considered by the court below does not loom large in favour of the revision petitioner and therefore it is negatived. The second contention is regarding the non-impleadment of the entire legal representatives of the original defendant. A person cannot blow hot and cold at each and every stage of a proceedings. This revision petitioner chose to prefer an appeal before the appellate court whereby he filed an affidavit to the effect that the property had been bequeathed in his favour by his father and he alone is entitled to get right over the property. It is true that there is an observation made by the appellate Judge at the admission stage that there was no petition to record him as the legal heir. So far as the revision petitioner is concerned, by admission he is claimed to be the owner of the property. Therefore, it is not for him to contend at each and every stage it is otherwise. So the said contention also cannot be accepted. Now the third contention raised is regarding the right of the present decree holder to execute the decree. The present petitioner in the execution petition is the

purchaser of the property and he has come on record in S.A.564.96 wherein he was impleaded as the fourth respondent. So, by virtue of the said impleadment and purchase right of the original plaintiff he has stepped into the shoes and there is no bar in such a person executing the decree. Therefore, the said contention also cannot be accepted. A perusal of the counter statement would further reveal that a total extent of the property is given and statements are made to the effect that portion of the properties are sold to some persons and there are some kudikidappukars in the property. But those things may not detain us longer for the specific reason that there is one document by virtue of which 12 cents out of the 25 cents had been purchased by the first defendant himself and there cannot be dispute with regard to the identity of the property of that defendant. When it is so, the property situated on the northern side of the property is the property to be redeemed and delivered and therefore such a contention also will not lie in the mouth of the revision petitioner at this stage. It is true that the learned Munsiff has not considered these objections which he should have but since materials were made available before me and as the case pertains to the year 1985 I have chosen to consider these objections in the C.R.P itself and decide.

From these discussions I hold that the decree holder is perfectly entitled to execute the decree and get delivery of the property of 13 cents as stated in the decree and the identity of the property can be fixed by carving out 13 cents which lies immediately north to the 12 cents of property which is purchased by the defendant as per a document of the year 1963. So, the court below shall direct the amin when he proceeds to deliver the property to do in accordance with these directions. C.R.P is disposed of with the above directions.

M.N.KRISHNAN
Judge

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